

MANDATE

S.D.N.Y. –N.Y.C.
08-cv-11117
Griesa, J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Richard C. Lee United States Courthouse, 141 Church Street, in the City of New Haven, Connecticut, on the 24th day of April, two thousand twelve.

Present:

Ralph K. Winter,
John M. Walker, Jr.,
José A. Cabranes,
Circuit Judges.

**USDC SDNY
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DATE FILED: May 17, 2012

*In re Tremont Securities Law, State Law and
Insurance Litigation.*

11-3899-cv (L);
11-3923-cv (Con);
11-4022-cv (Con);
11-4030-cv (Con)

Defendants-Appellees Tremont Partners, Inc., Tremont Group Holdings, Inc., Tremont (Bermuda) Limited, Tremont Capital Management, Inc., Rye Investment Management, Harry Hodges, James Mitchell, Robert I. Schulman, Rupert A. Allan, Lynn O. Keeshan, Patrick Kelly, Stephen Thomas Clayton, Stuart Pologe, Cynthia J. Nicoll, and Darren Johnston (collectively, “Tremont”), joined by Massachusetts Life Insurance Company and MassMutual Holding LLC (the “MassMutual Defendants”), Oppenheimer Acquisition Corporation (“Oppenheimer”), Arthur M. Brainson, Yvette Finkelstein, and Group Defined Pension Plan & Trust (collectively, “Plaintiffs-Appellees in the Securities Subclass”), Arthur E. Lange Revocable Trust, Arthur C. Lange, Neal J. Polan, HFM Charitable Remainder Trust, Eastham Capital Appreciation Fund LP and NPV Positive Corp. (collectively, “Plaintiffs-Appellees in the State Law Subclass”), Tremont Market Neutral Fund L.P., Tremont Market Neutral Fund II, L.P., Tremont Market Neutral Fund Limited, Tremont Opportunity Fund Limited, Tremont Opportunity Fund II L.P., Tremont Opportunity Fund III L.P., Tremont Arbitrage Fund, L.P., Tremont Arbitrage Fund-Ireland, Tremont Strategic Insurance Fund, L.P., Rye Select Broad Market Fund, L.P., Rye Select Broad Market XL Fund, L.P., Rye Select Broad Market Prime Fund, L.P., Rye Select Broad Market Insurance Fund, L.P., and Rye Select Broad Market Portfolio Limited (collectively, “the Funds”), move to dismiss the appeal of Appellant Philadelphia Financial Life Assurance Company in docket number 11-3923, for lack of standing. Upon due consideration, it is hereby ORDERED that the motions are GRANTED.

SAO-GK

MANDATE ISSUED ON 05/17/2012

Tremont, joined by the MassMutual Defendants, Oppenheimer, and the Funds, also moves to dismiss the appeal of Appellant Orloff Family Trust (“Orloff”) in docket number 11-3899 insofar as Orloff appeals from the district court’s August 22, 2011 order approving the settlement (the “Final Judgment”). Upon due consideration, it is hereby ORDERED that the motions are GRANTED because: (1) in its response papers, Orloff has agreed to withdraw its appeal from the Final Judgment; and (2) because any arguments Orloff would make on appeal regarding the Final Judgment would be deemed waived, as the district court had no opportunity to rule on any such arguments because Orloff made no arguments before the district court regarding the Final Judgment. *See Singleton v. Wulff*, 428 U.S. 106 (1976) (“It is the general rule . . . that a federal appellate court does not consider an issue not passed upon below.”).

Plaintiffs-Appellees in the Securities and State Law Subclasses, joined by the MassMutual Defendants and Oppenheimer, move to dismiss Orloff’s appeal from the Final Judgment, as well as Orloff’s appeal from the district court’s August 22, 2011 judgments regarding attorneys’ fees (the “Fee Judgments”). Upon due consideration, it is hereby ORDERED that: (1) insofar as the motions seek dismissal of Orloff’s appeal from the Final Judgment, the motions are GRANTED; and (2) insofar as the motions seek dismissal of Orloff’s appeal from the Fee Judgments, the motions are DENIED without prejudice to further briefing before the merits panel.

FOR THE COURT:

Catherine O’Hagan Wolfe, Clerk



A True Copy

Catherine O’Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

